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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/719,706	12/13/2000	Gabriel Guary	35711-00001	3249
29471	7590	11/15/2006		
MCCRACKEN & FRANK LLP 200 W. ADAMS STREET SUITE 2150 CHICAGO, IL 60606				
			EXAMINER BANTA, TRAVIS R	
			ART UNIT 3714	PAPER NUMBER

DATE MAILED: 11/15/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 09/719,706	Applicant(s) GUARY ET AL.	
	Examiner Travis R. Banta	Art Unit 3714	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 08 November 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-10 and 12-33 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-10, 12-33 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 13 December 2000 and 04 March 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date <u>12-13-2000</u>
<u>7-26-04</u> | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Interference

Applicant has suggested an interference pursuant to 37 CFR 41.202(a) in a communication filed November 8, 2004.

The request for interference filed November 8, 2004 is acknowledged. However, examination of this application has not been completed as required by 37 CFR 41.102(a). Consideration of a potential interference is premature.

Applicant failed to provide sufficient information to identify the application or patent with which the applicant seeks an interference. See 37 CFR 41.202(a)(1) and MPEP § 2304.02(a).

Applicant failed to (1) identify all claims the applicant believes interfere, and/or (2) propose one or more counts, and/or (3) show how the claims correspond to one or more counts. See 37 CFR 41.202(a)(2) and MPEP § 2304.02(b).

Applicant failed to provide a claim chart comparing at least one claim of each party corresponding to the count. See 37 CFR 41.202(a)(3) and MPEP § 2304.02(c).

Applicant failed to provide a detailed explanation as to why applicant will prevail on priority. See 37 CFR 41.202(a)(4), (a)(6), (d) and MPEP § 2304.02(c).

Claims 14-33 has been added or amended in a communication filed on November 8, 2004 to provoke an interference. Applicant failed to provide a claim chart showing the written description for each claim in the applicant's specification. See 37 CFR 41.202(a)(5) and MPEP § 2304.02(d).

Applicant is given ONE MONTH or THIRTY DAYS, whichever is longer, from the mailing date of this communication to correct the deficiency(ies). THE PROVISIONS OF 37 CFR 1.136 DO NOT APPLY TO THE TIME SPECIFIED IN THIS ACTION.

Claims 14-33 rejected under 35 U.S.C. 135(b) as being made more than one year from the date on which U.S. Patent No. 6,672,962 was granted. See *In re McGrew*, 120 F.3d 1236, 1238, 43 USPQ2d 1632,1635 (Fed. Cir. 1997) where the Court held that the application of 35 U.S.C. 135(b) is not limited to *inter partes* interference proceedings, but may be used as a basis for *ex parte* rejections.

New Matter

Claims 18-21, 25, 27-29, 33 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter that was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention.

With respect to claim 18, the instant application has no general description of a cursor to be displayed to the screen. Indeed the word cursor is not found in the specification.

With respect to claim 19, Figure 1 shows the directional controller to be on the inclined portion of a slide and not the grip. If the slide were to be gripped on an actual firearm the slide would significantly damage a hand. Therefore the slide cannot be treated as a part of the grip.

With respect to claim 20, Figure 1 shows the cable protruding from the bottom of the handle or where a clip would be inserted into a real firearm. There is no basis for the cable protruding from the rear of the handle.

With respect to claim 25, although there is disclosure of a simulated recoil device inside the video pistol, there is no mention of an ability to fire a cannonball. There is no suggestion or disclosure that the recoil of a cannonball could be simulated in a hand held video pistol.

With respect to claim 27, the general disclosure on page 2 lines 4-9 indicate that the instant application's effort is to provide a player the ability to move through a game by movement choice. The disclosure does not support a predetermined course.

With respect to claim 28, the general disclosure on page 2 lines 4-9 indicate that the instant application's effort is to provide a player the ability to move through a game by movement choice. The disclosure does not support an objective viewpoint to view the main character rather supports the ability of the main character to view whatever is wished according to the player's desires.

With respect to claim 29, there is no disclosure of a supporting mechanism for rotatably supporting a gun barrel on a pedestal.

With respect to claim 30, there is no disclosure of the instant controller being able to control more than one displayed object in a game. The general disclosure of the specification is allowing a greater range of freedom for a player's character rather than allowing several displayed objects to move.

Claim Rejections - 35 USC § 102

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 14-33 are rejected under 35 U.S.C. 102(e) as being anticipated by Ozaki et al. US(6,672,962).

Regarding claim 14, Ozaki et al. (6,672,962) discloses a pistol controller which controls a game in response to signals supplied from the controller comprising a barrel, a grip, a index finger operated trigger, means for detecting a position of a gun barrel relative to a display screen, and a directional key on the slide operable by the thumb while gripping the gun and supplies the game device with direction signals for which the display responds in a corresponding direction (see claim 1).

Regarding claim 15, Ozaki et al. (6,672,962) discloses a gun shaped controller for a game where the controller signals a controlled variable to a game which is a variation of the position of the controller while the controller is operably held and manipulated during play comprising a barrel, a grip, a trigger, means for supplying signals including a directional signal which does so in response to player manipulation of the controller, displayed objects responding to supplied signals, and means for detecting a position of said gun barrel relative to the display (see claim 3).

Regarding claim 16, Ozaki et al. (6,672,962) discloses a signal generating gun shaped controller that provides game development with respect to a game image on the

Art Unit: 3714

display and an integrally formed directional pad on the barrel of the gun shaped controller (see claim 5).

Regarding claim 17, Ozaki et al. (6,672,962) discloses directional keypad which sends movement signals of upward, downward, leftward, and rightward to a game device (see claim 5,6).

Regarding claim 18, Ozaki et al. (6,672,962) discloses a gun shaped controller that controls a displayed object in the form of a character or cursor (see claim 7).

Regarding claim 19, Ozaki et al. (6,672,962) discloses a directional key arranged on an upper part of the gun grip (see claim 8).

Regarding claim 20, Ozaki et al. (6,672,962) discloses a cable provided to the rear of the gun grip (see claim 16).

Regarding claim 21, Ozaki et al. (6,672,962) discloses an operation button on the gun shaped controller above the upper part of a directional key (see claim 19).

Regarding claim 22, Ozaki et al. (6,672,962) discloses a directional key arranged on a rear facing forward inclining face (see claim 20).

Regarding claim 23, Ozaki et al. (6,672,962) discloses a directional key is positioned higher on the pistol than the tip of a trigger on a gun shaped controller (see claim 21).

Regarding claim 24, Ozaki et al. (6,672,962) discloses a directional key approximately in the middle of the rear width of the gun shaped controller (see claim 22).

Art Unit: 3714

Regarding claim 25, Ozaki et al. (6,672,962) discloses an ability of a player to virtually fire a cannonball toward a game image on a display with a gun shaped controller having a recoil-simulating feature (see claim 27).

Regarding claim 26, Ozaki et al. (6,672,962) discloses a game scenario where a main character and a enemy character do battle via signals from the controller to the game machine instructing directions of movement and attack and progresses the game (see claim 27).

Regarding claim 27, Ozaki et al. (6,672,962) discloses a gaming machine with image processing means for forming images of a main character moving on a predetermined course (see claim 28).

Regarding claim 28, Ozaki et al. (6,672,962) discloses a gaming machine providing an objective viewpoint to view the main character when signals are received from a gun shaped controller to move the main character and an image from the main character's viewpoint when battling an enemy (see claim 29).

Regarding claim 29, Ozaki et al. (6,672,962) discloses a gun shaped controller with a directional key pad on the slide for instructing a character to move on the screen further comprising signal processing means for transmitting signals from the gun to the game apparatus, a supporting mechanism to support the gun on a swivel mount and a recoil mechanism to provide simulated recoil of a cannonball when fired (see claim 30)

Regarding claim 30, Ozaki et al. (6,672,962) discloses a gun shaped controller with an integrally formed directional key pad which transmits signals to move a main character in several directions on the display (see claim 41).

Art Unit: 3714

Regarding claim 31, Ozaki et al. (6,672,962) discloses a gun shaped controller with disposed directional key pad manually operable by a player to move at least a main character in several directions on the screen (see claim 42).

Regarding claim 32, Ozaki et al. (6,672,962) discloses a gun shaped controller with a directional keypad disposed thereon whose directions are that of upward, downward, leftward, and rightward (see claim 43).

Regarding claim 33, Ozaki et al. (6,672,962) discloses a gun shaped controller that supplies signals to an amusement device for instructing movement and direction for controlling a displayed item in a virtual game (see claim 44).

Response to Arguments

Applicant's arguments filed November 8, 2004 have been fully considered but they are not persuasive. Applicant has argued that the complexity of the combination of the Yamaguchi patent US(5,583,407) and the 3DZonemaster is such that a person of average skill in the art would not obviously combine the two. The Examiner has determined that the complexity of the combination is not at issue. The Yamaguchi patent teaches a hand-operated controller that is able to provide three degrees of freedom to a video game machine. 3Dzonemaster teaches a hand-operated means for controlling the movement of a virtual actor. It would therefore be a case of prima facie obviousness to modify the shooting game disclosed by the Yamaguchi patent which suggests a hand operated means for controlling the movement of a virtual actor to add the feature of an integrated control movement of the virtual actor in the pistol. The

Art Unit: 3714

Yamaguchi patent suggests that the addition of a movement controller enhances a shooting type game by allowing a player to easily manipulate the movements of a character. Moreover, integrating the Yamaguchi patent and the 3Dzonemaster results in a pistol that allows the player to control the movement of the virtual actor and shoot the pistol with only one hand.

Applicant has also argued that the specific function of the integral controller is not specifically disclosed. The integral controller is a top-hat which is notoriously well known in the art to be an equivalent substitute for a plus sign (+) style directional pad.

Despite the fact that the controller in the combination suggested by the Examiner could be complicated to use, the combination is proper and the rejection is respectfully maintained. **Claims 1-10, 12, 13 are rejected under 35 U.S.C. 103(a) as being obvious in view of Yamaguchi ('407) over 3Dzonemaster.**

Citation of pertinent Prior Art

The following prior art is considered pertinent to the applicant's disclosure but is not relied upon.

Blair et al. US(4,695,953) discloses a three dimensional control mechanism that is used by a player interactively with a game.

Bromely et al. US(4,552,360) discloses a video game controller in the general shape of a pistol with an integral directional joystick.

Art Unit: 3714

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Travis R. Banta whose telephone number is (571) 272-1615. The examiner can normally be reached on Monday-Friday 9-4.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, John Hotaling can be reached on (571) 272-4437. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

TB

JOHN M. HOTALING, II
PRIMARY EXAMINER